IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 7011 of 2007(S)

PETITIONER:

GEORGE ISAAC, CHAIRMAN,
THE GANDHI PEACE FOUNDATION (KOTTAYAM),
PALATHINKAL HOUSE, T.B.ROAD, KOTTAYAM,

BY SRI.GEORGE ISAAC (PARTY IN PERSON)

RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY, MINISTRY OF HEALTH AND FAMILY WELFARE,
NIRMAN BHAVAN, NEW DELHI.

2. THE DIRECTOR GENERAL OF HEALTH SERVICES,
MINISTRY OF HEALTH AND FAMILY WELFARE,
NIRMAN BHAVAN, NEW DELHI.

3. THE SECRETARY, MINISTRY OF CONSUMER
AFFAIRS, FOOD AND PUBLIC DISTRIBUTION,
KRISHI BHAVAN, NEW DELHI.

4. THE SECRETARY,
THE MINISTRY OF FOOD PROCESSING INDUSTRIES,
PANCHSHEEL BHAVAN, AUGUST KRANTI MARG,
NEW DELHI-110 049.

5. THE STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM.

BY ASSISTANT SOLICITOR GENERAL . SRI.P.PARAMESWARAN NAIR .
R5 BY SR. GOVERNMENT PLEADER SMT. MEERA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.P.(C) No. 7011 OF 2007

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Dated this the 25th May, 2007

J U D G M E N T

H.L. Dattu, C.J.:

The petitioner is the Chairman of the Gandhi Peace Foundation , Kottayam . He is before this court for the following reliefs; they are:

"1). *To issue a writ of mandamus, writ, order or direction directing the respondents to focus the implementation of the Act on ' eliminating the danger to human life from the sale of unwholesome articles of food – on preventing the contravention of mandatory safety standards, applicable to all articles of food and drinking water for (i) the content of pesticide residues , agricultural chemicals, poisonous metals, food additives, veterinary pharmaceuticals, micro organisms and all disease causing substances, (ii) safety, hygiene and sanitation in production, processing, storage and distribution (iii) transparency and truthfulness in labeling;*

2) *To issue a writ of mandamus, writ, order or direction directing the respondents to ensure that such standards are simple, understandable, affordable, achievable and verifiable under conditions in this country;*

3) *To issue a writ of mandamus, writ, order or direction directing the respondents to focus on physically preventing rather than prosecuting the contravention of such standards;*

4) *To issue a writ of mandamus, writ, order or direction directing the respondents to provide for the standardized, transparent , accurate and reliable analysis of samples by Public Analysts (as mandated in subsections (ee) and (hh) of the Act, to enable compliance with standards notified under the Act and to monitor compliance with the safety standards notified under the Act;*

5). *To issue a writ of certiorari to quash as in no way necessary to 'eliminate the danger to human life from the sale of unwholesome articles of food ' as ultra vires of the Act and as in contravention of Article 19(1) g of the Constitution, the 250 odd mandatory identity standards in Appendix B of the Rules ;*

6). *To issue a writ of certiorari to quash as in no way necessary*

to 'eliminate the danger to human life from the sale of unwholesome articles of food' and as in contravention of Articles 14,15, 19(1)g and Article 21 of the Constitution of India, amendments to the Act in 1976 which (i) deny the vendor a sealed sample by the Food Inspector which he can have analyzed in an independent laboratory to defend himself in prosecutions (Section 11 of the Act) which (ii) restrict a second analysis to analysis in a designate Central Laboratory (see Section 13 of the Act) which (iii) deem the results of such second analysis as final and conclusive as evidence , (see subsection (5) of Section 13 of the Act) which (iv) deny the courts the power to distinguish between the contravention of (i) safety standards, which render articles of food factually adulterated, and (ii) identity standards, which render articles of food fictionally adulterated, and mandate a minimum six month jail sentence for all offences under the Act, see Section 16 of the Act;

7) *To issue a writ of mandamus, writ, order or direction directing the respondents to withdraw all existing prosecutions for the alleged contravention of the identity standards notified in Appendix B of the Rules.*

8) *To issue a writ of mandamus, writ, order or direction directing the respondents to remit the jail sentences on all those convicted for the alleged contravention of such standards.*

9) And grant such other reliefs as this Honourable Court may deem fit and proper on the facts and circumstances of the case. "

2. On an earlier occasion, the petitioner was before this court for the very same reliefs as sought in the present Writ Petition . This court , after considering the plea of the petitioner, has rejected the Writ Petition and in that has observed:

> *"3. A reading of the pleadings and the reasons on the basis of which reliefs asked and reproduced above are based would show that the petitioner would like this court to re-write or re-enact the Prevention of Food Adulteration Act and the Rules framed thereunder as per the vision of the petitioner . Even if the points raised by the petitioner may be valid and there may have some logic in redrafting*

> *the Act and Rules, surely, this Court in the powers vested in it under Article 226 of the Constitution of India shall not be able to do so. What the petitioner wants is in the exclusive domain of the Parliament. The petitioner, instead of using his energies would do better in knocking at the right doors. We only observe that the existing law should be meticulously observed and if there may be some shortcoming in that, the petitioner may separately bring them to the notice of this Court."*

3. The cause of action, pleadings and prayer sought in the present Writ Petition is identical with the cause of action, pleadings and prayer made in the earlier Writ Petition. Since the earlier Writ Petition has already been dismissed by this Court, we are of opinion that the present Writ Petition is hit by the principles of res judicata and therefore the reliefs sought for in this Writ Petition cannot be granted and accordingly Writ Petition requires to be rejected and it is rejected. Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK